



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

June 1, 2009

CERTIFIED MAIL
7006 3450 0001 6753 6621

Rainier Yacht Harbor, LLC
ATTN: Mr. Bruce Steel
PO Box 875
Tacoma, WA 98401

RE: Water Quality Certification Order No. **6824** for Corps Public Notice No. **NWS-2007-282-SO** to construct a 25-slip marina within Gig Harbor, Pierce County, Washington

Dear Mr. Steele:

On February 12, 2009, Rainier Yacht Harbor, LLC, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the construction of a new 25-slip marina with associated utilities within Gig Harbor. Construction of the new marina will entail: the construction of 25 slips ranging in length from 44' to 148', restoration of an existing net shed, removal of 36-creosote-treated piles, repair of two existing creosote piles, replacement of up to seven (7) existing creosote piles with steel or concrete piles, installation of up to 44 new steel or concrete piles, and the replacement of 190-foot creosote timber bulkhead with a concrete and steel bulkhead. The U.S. Army Corps of Engineers issued a public notice on February 10, 2009, for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J. Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

LO:dn
Enclosure



cc: Ron Wilcox, Corps of Engineers
Theresa Mitchell, WDFW
Cliff Johnson, City of Gig Harbor
Jeffrey Becker, P.E., Layton & Sell, Inc.

e-cc: ecyrefedpermits@ecy.wa.gov
Loree' Randall, Ecology HQ
Alex Callender, Ecology SWRO/SEA
Deb Cornett, Ecology SWRO/WQ
Lori Ochoa, Ecology SWRO/SEA

**IN THE MATTER OF GRANTING A
WATER QUALITY
CERTIFICATION TO
Rainier Yacht Harbor, LLC**
in accordance with 33 U.S.C. 1341
(FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

) **ORDER # 6824**
) **Corps Reference No. NWS-2007-282-SO**
) For the construction of the Harbor Town Marina,
) Gig Harbor, Pierce County, Washington.
)
)
)
)

TO: Rainier Yacht Harbor, LLC
ATTN: Mr. Bruce Steel
P.O. Box 875
Tacoma, WA 98401

On February 12, 2009, Rainier Yacht Harbor, LLC, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on February 10, 2009.

The project is proposing to construct a new 25-slip marina which will entail: the construction of slips ranging in length from 44 feet to 148 feet; restoration of an existing net shed; removal of 36-creosote-treated piles; repair of two existing creosote piles; replacement of up to seven (7) existing creosote piles with steel or concrete piles; installation of up to 44 new steel or concrete piles; extension of utilities to the marina slips; and, the replacement of 190-foot creosote timber bulkhead with a steel H-pile and concrete panel bulkhead. The project is located at 3525 and 3518 Harborview Drive, Gig Harbor, Pierce County, Washington 98332; Section 05, Township 21 North, Range 2 East; WRIA 15, Kitsap Watershed.

To compensate for project impacts associated with an increase of overwater coverage, mitigation will include: the demolition of two existing timber pier structures; incorporation of light permeable grating into the new floating piers, access ramps, and gangway; removal of 36 creosote-treated timber piles; and, the removal of an existing 190-foot-long creosote timber pile bulkhead which will be replaced with a concrete and steel bulkhead landward of the existing bulkhead. Approximately 437 square feet of new high intertidal habitat will be created and "Fish mix" gravel will be placed over the former bulkhead site.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and,
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean Rainier Yacht Harbor, LLC, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. **6824** and Corps No. **NWS-2007-282-SO**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 12, 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new Water Quality Certification and public Notice or if a modification to this Order is required.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permit, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project site.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Water Quality Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance as specified in WAC 173-201A-210(1)(e)(i). Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210 (1)(e)(i)(D), which allows a radius of 150-foot temporary mixing zone from the point of in-water activities. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable.
 - a. For this project, the following is considered to be an exceedance of the standard:
 - i. Project-related turbidity visible 150 feet from the in-water activity; OR,
 - ii. 5NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background

turbidity is more than 50NTU, at the point of compliance when a turbidimeter is used.

3. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
 - a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and,
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
4. Mitigation and/or additional monitoring may be required if water quality standards are not met.

C. Timing:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by Washington Department of Fish and Wildlife (WDFW) for this project.

D. Notification Requirements:

Written notification (FAX, e-mail, or mail) shall be made to Ecology's Southwest Regional Office Federal Permit Coordinator in accordance with condition A.2 above for the following activities:

- a. At least ten (10) days prior to the pre-construction meeting
- b. At least ten (10) days prior to the onset of any work on site
- c. At least ten (10) days prior to the onset of in-water work
- d. Within ten (10) days after completion of construction
- e. Immediately following a violation of the state water quality standards or any condition of this Order

E. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts.
2. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
4. The project site shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Equipment shall enter and operate only within the delineated clearing limits, corridors, and stockpile areas.
5. The Applicant shall establish a separate contained area for washing down vehicles and equipment, which does not have any possibility of draining to surface waters and wetlands. No wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters or storm drains.
6. No existing shoreline material (i.e., logs, rocks, gravel cobbles, woody debris or other bed material) shall be relocated or used as bulkhead armor, as fill, or for any other purpose except that bed material located exactly where new pilings and footings are to be placed may be relocated.
7. Project activities shall be conducted to minimize siltation of the beach area and bed.
8. The Applicant shall operate the barge(s) and boats in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
9. Barges shall not be allowed to ground-out during construction.
10. All cast-in-place concrete shall be poured in the dry, or within confined waters not being dewatered, and shall be completely cured prior to coming into contact with state waters. Uncured concrete and concrete by-products shall be completely sealed off and totally contained using sealed forms or other leak-proof containment systems, and not allowed to contaminate or enter waters of the state.
11. During construction, the Applicant shall have a boat on site at all times to retrieve debris from the water.
12. All construction debris shall be properly disposed of upland so that it cannot enter a waterway or wetland or cause water quality degradation to state waters.
13. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
14. Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly into waters of the state. Turbid water shall be pumped to an upland area to allow the turbid water to settle. The discharge from the upland areas

shall meet water quality criteria at the point of discharge into surface waters and/or wetlands

15. Dewatering water that is not turbid may be discharged directly to surface waters and/or wetlands provided that: a) waste water containing raw concrete or other harmful material has not been in contact with the water to be discharged and b) the water will meet all the water quality standards at the point of discharge.
16. Any wooden dock components, piling, pier support, and other materials composed of pressure treated wood shall be professionally and commercially produced and chemically fixed in accordance with all current best management practices as contained in the Western Wood Preservers Institute's latest edition of "The Best Management Practices for the Use of Treated Wood in Aquatic Environments."

Piling Removal:

17. Approximately 36 existing creosote-treated wood pilings shall be removed, either completely extracted or cut off at the mudline.
18. Piles removed from the substrate shall be moved immediately from the water into a barge or onto uplands. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove the adhering material from the pile.
19. The work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
20. The piles shall be disposed of at an approved upland disposal site.

Pile Driving:

21. The new pilings shall include placement of approximately 44 steel or concrete pilings.
22. The new pilings shall be installed using a vibratory hammer or impact hammer.
23. If an impact hammer is used for steel piling up to 10 inches in diameter, a block of wood at least 6 inches thick will be placed between the pile driver and the pile as a noise minimization measure.
24. For any piles greater than 10 inches in diameter, a bubble curtain shall be installed to attenuate sound impacts.

F. Emergency/Contingency Measures:

1. The applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials available on site.
2. Any work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 of the nature of the problem and any actions taken to correct the problem and any proposed changes in operations to prevent further problems.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

G. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia, WA 98504-7608

Deliver your appeal in person to:

OR The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

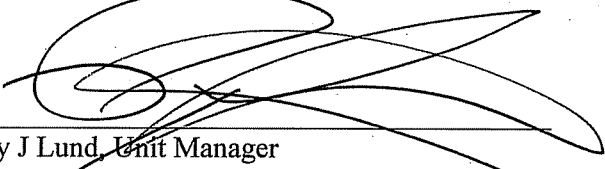
3. And send a copy of your appeal to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 1 day of JUNE, 2009, at Lacey, Washington.



Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

Attachment # A

Rainier Yacht Harbor, LLC
New Harbor Town Marina
Order # **6824**

Statement of Understanding Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for Rainier Yacht Harbor, LLC in the development of the new Harbor Town Marina project located within Gig Harbor at 3525 & 3518 Harborview Drive, Gig Harbor, Pierce County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**6824** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

June 1, 2009

CERTIFIED MAIL
7006 3450 0001 6753 6621

Rainier Yacht Harbor, LLC
ATTN: Mr. Bruce Steel
PO Box 875
Tacoma, WA 98401

**RE: Coastal Zone Consistency for Corps Reference #NWS-2007-282-SO
U.S. Army Corps Public Notice for Section 404 of the Clean Water Act (CWA) and
Section 10 of the Rivers and Harbors Act to Authorize the construction of the New
Harbor Town Marina, Gig Harbor , Pierce County, Washington**

Dear Mr. Steele:

On February 12, 2009, Rainier Yacht Harbor, LLC, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Rainier Yacht Harbor, LLC determination that the proposed work is consistent with Washington's CZMP.

You also have the right to appeal this decision to the Pollution Control Hearings Board. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.



1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

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The Pollution Control Hearings Board
4224 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Southwest Regional Office
Attn: Lori Ochoa
PO Box 47775
Olympia, WA 98504-7775

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

If you have any questions regarding Ecology's consistency determination please contact Lori Ochoa at (360) 407-6926.

Sincerely,



Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

PJL:LO:dn